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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,127	03/06/2001	Richard E. Riman	P-24,186 USA	3817

7590

09/04/2002

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 09/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

Examiner

Applicant(s)

Group, Art, Unit

6

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 7/15/02
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 6-29, 29 is/are pending in the application.
- ☐ Of the above claim(s) is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 6-20 are is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☒ Claim(s) 6-20, 29 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 2
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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Applicant's election without traverse of Group II, species of calcium hydroxide, magnesium hydroxide and diammonium hydrogen phosphate in Paper No. 5 is acknowledged.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 6-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear what limitation is intended by "mechanochemically reacting".

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6-8, 12-15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Dolci et al WO 0003747.

See pages 12 and 15, Ca substituted Mg in hydroxy apatite is shown, with the instant preparation is shown at page 21.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Sarcho—4097935 is in view of Ducheyne et al 5830480.

Sarcho: The instant crystalline, phase pure hydroxyapatite is shown (column 5, lines 8-16). Diammonium phosphate (column 8, line 6) is a phosphate ion source, interacted mechanochemically (column 8, lines 11-23). However, Mg oxide, although utilized in preparations. (Column 14) is not explicitly used to replace Ca.

Ducheyne show this procedure, as a sol-gel aqueous treatment (summary, column 2), with Mg replacement (column 4).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize Sarcho to prove hydroxy apatite to modify as shown by Ducheyne to permit Mg or other ion replacement to improve, for example, conduction properties (column 15, bottom of Jarcho).

The journal article was not present: please provide.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

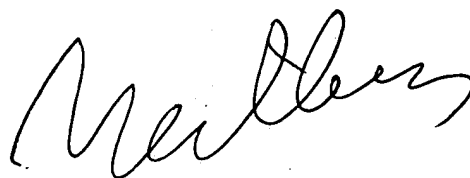
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the

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organization where this application or proceeding is assigned are 305-4556 for regular communications and 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy:mv  
August 28, 2002

A handwritten signature in black ink, appearing to read "Neil S. Levy". The signature is fluid and cursive, with the first name "Neil" being more prominent than the last name "Levy".

NEIL S. LEVY  
PRIMARY EXAMINER